

APPENDIX F

**CITY OF NAPA/NAPA SANITATION DISTRICT
AGREEMENT #7247**

**AGREEMENT BETWEEN CITY OF NAPA
AND
NAPA SANITATION DISTRICT
FOR
SALE OF RECYCLED WATER WITHIN
CITY OF NAPA WATER SERVICE AREA**

This Agreement is made this 4th day of Aug, 1998, by and between the City of Napa ("City"), a Charter City incorporated under the laws of the State of California, and Napa Sanitation District ("NSD"), a public district formed and governed by California Health and Safety Code section 4700 et seq.

WHEREAS, under its municipal powers CITY acquires water supplies and treats and delivers potable water to inhabitants and businesses within its water service area:

WHEREAS, NSD treats the wastewater generated by the inhabitants and businesses within the CITY's water service area and thus has a ready supply of recycled water available for non-potable uses:

WHEREAS, both the CITY and NSD desire to utilize the water supplies which they each have available to maximize the efficiency and minimize the costs of water supply for various purposes to the inhabitants and businesses within the CITY's water service area.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

1. CITY Water Service Area Defined

a. The CITY's water service area covers the area generally shown on the map attached hereto as Exhibit A.

b. CITY is the sole purveyor of water within its water service area, provided however, that during the term of this Agreement, CITY agrees that NSD may provide and deliver recycled water within the CITY's water service area to the extent provided herein.

2. Service area for Recycled Water Delivery Designated:

a. Upon execution of this Agreement, and during its term, CITY shall permit NSD to solicit customers for its recycled water and to deliver recycled water to

customers within the portion of the CITY's water service area shown on Exhibit A as the ReUse Area, being;

(1) The area east of the Napa River, south of Imola Avenue, west of Highway 221, and north of the City of American Canyon water service area, and;

(2) The properties known as "Stanley Ranch", "South Napa Market Place", and "Napa State Hospital", and the NSD property north of and adjacent to Imola Avenue east of the Napa River.

b. Delivery of recycled water within additional portions of the CITY's water service area shall require the prior written approval of the CITY notwithstanding any approval or authority from SWRCB to convey recycled water within the entire area set forth on Exhibit A.

c. The area within which NSD may deliver recycled water pursuant to this Agreement or any amendment thereof shall be referred to as the "ReUse Area."

d. CITY shall not agree to or approve of the delivery of recycled water within the ReUse Area other than by NSD during the term of this Agreement.

3. Recycled Water Facilities:

a. Construction of facilities, including without limitation pipelines, meters and pumps, for treatment, conveyance and delivery of recycled water within the ReUse Area shall be subject to all applicable regulatory approvals and procedures, and subject further to the CITY's review and imposition of conditions designed to avoid conflicts with other facilities and utilities to the extent they are within the CITY rights-of-way.

b. NSD shall own, construct, maintain, operate and repair all facilities necessary for the treatment, conveyance, delivery, and measurement of recycled water.

c. NSD shall notify CITY of new recycled water customers within the reuse area at least 60 days prior to connection to NSD recycled water facilities.

4. Reimbursement for Loss of Revenue:

a. NSD shall reimburse CITY for CITY's loss of potable water sales revenue due to CITY's existing customers ("prior CITY customers") taking delivery of recycled water from NSD in lieu of purchasing potable water supplies from the CITY. The amount of reimbursement shall be calculated for the aggregate total of all prior CITY customers, as set forth below:

(1) Within 30 days of [the end of the calendar year], NSD shall report to CITY the identities and addresses of all recycled water customers within the ReUse Area, and the date that each customer connected to the recycled water system.

(2) The CITY shall determine whether each such recycled water customer is a prior CITY customer. For all such prior CITY customers, CITY shall determine the aggregate net revenue CITY would have received from the sale of potable water based on:

- a. The quantity of potable water each prior CITY customer consumed the average of three year's prior to conversion to recycled water, and
- b. The applicable potable water rates during the current calendar year that the prior CITY customer would have paid if remaining on CITY's potable system, less the costs of energy and chemicals required to produce and treat such water. Costs of producing and treating potable water shall be determined on a proportional basis with the cost of producing and treating all potable water delivered by CITY during the same period.

(3) CITY shall notify NSD in writing of its determination of the amount of reimbursement due CITY from NSD pursuant to this Article, together with the costs and calculations supporting its determination, and within 30 days of such notification NSD shall pay to CITY the amount of reimbursement owed (see Exhibit "B" for example calculation). If NSD disagrees with CITY's determination of the amount of reimbursement due, NSD shall notify CITY within 20 days of NSD's receipt of notice and pay any undisputed amount within 30 days of CITY's original notice to NSD. Thereafter, the parties shall meet as soon as possible to discuss the disagreement and attempt to resolve the matter within 60 days of CITY's original notice to NSD. If no resolution is achieved, the matter shall be arbitrated pursuant to the provisions of Section 10, below.

b. NSD's reimbursement obligation shall continue from year to year until the amount of CITY potable water sales, measured in gallons, has regained its previous level prior to such conversion. For purposes of calculating the amount of reimbursement due the CITY for conversion to recycled water by a prior CITY customer.

(1) The rate of increase of CITY potable water sales, measured in gallons, is deemed by the parties to be three-quarters of one percent (0.75%) per year, and

(2) The year from which growth in CITY's potable water sales is to be measured in gallons is the last preceding year in which NSD's reimbursement obligation was zero, and

(3) CITY's increase of .75% per year shall be subtracted from CITY's net lost potable water sales measured in gallons as defined in Section 4 a. (2) above (See Exhibit "B" for example calculation).

c. Reimbursement obligations shall apply only to customers which, prior to taking delivery of recycled water from NSD, purchased potable water supplies from CITY.

d. For purposes of water conservation reporting, NSD shall provide CITY with quantities of recycled water delivered to each recycled water customer within the ReUse Area.

5. Disclosure of Recycled Water Costs:

So that potential customers in the ReUse Area understand the cost factors associated with determining the price of recycled water, NSD shall advise all potential customers of the various components of the recycled water rate in advance of obtaining a service commitment including, but not limited to:

- a. Capital Costs of Delivery Facilities (Pipelines, Pumps, Meters, etc.)
- b. Operating and Maintenance Costs of Delivery Facilities
- c. Capital Costs of Wastewater Treatment Facilities
- d. Energy and Chemical Costs of Wastewater Treatment

6. Reciprocal Rights to Water Service:

a. NSD shall make available at no cost up to 16,300,000 gallons (approximately 50 acre feet) of recycled water per year to CITY for irrigation of Kennedy Park, not including the Kennedy Golf Course, for irrigation purposes. NSD shall make available at no cost up to 16,300,000 gallons (approximately 50 acre feet) of recycled water per year to Napa Valley College for irrigation purposes. Any water used by CITY's Kennedy Park in excess of 16,300,000 gallons per year shall be billed to CITY at NSD's recycled water rate charged to other comparable recycled water customers. Any water used by the Napa Valley College in excess of 16,300,000 gallons per year shall be billed to Napa Valley College at NSD's recycled water rate charged to other comparable recycled water customers.

b. CITY shall make available to NSD at no cost up to 3,600,000 gallons (approximately 11 acre feet) of potable water per year for use at NSD's wastewater treatment plants on Imola Avenue and Soscol Ferry Road and for flushing of sewer mains, but not for filling recycled water reservoir at NSD's Soscol Treatment Facility to allow delivery to NSD's recycled water customers for irrigation use. All potable water used by NSD in excess of 3,600,000 gallons per year or for filling recycled water reservoir for irrigation water deliveries, shall be billed to NSD at the rates which CITY then imposes on other potable water customers within CITY's incorporated boundaries.

c. All recycled water use provided for in this Agreement shall be metered and reported to the CITY. In addition, NSD shall meter separately and report to CITY the amount of all potable water used for filling recycled water reservoir for irrigation water deliveries to NSD customers.

d. NSD and City agree to execute the attached Agreement for Supply of Recycled Water to Kennedy Park (Exhibit "C") obligating NSD to provide and City to utilize NSD recycled water in place of City potable water to irrigate the Kennedy Golf Course and Park. NSD and City agree to treat the Kennedy Golf Course as a "prior City customer" pursuant to Section 4 hereof for purposes of NSD reimbursing City for its "loss of revenues" attributable to the use of reclaimed water for irrigation on the Kennedy Golf Course. NSD shall supply the recycled water to Kennedy Golf Course upon the same favorable rates and terms offered other users; provided, however, that should NSD impose a monthly surcharge on its recycle rates in order to recoup the monies paid to City under the reimbursement requirement of Section 4 hereof, the amount of the monthly surcharge to City together with NSD's regular rates charged for recycled water shall not exceed eighty percent (80%) of the rates charged by City to its customers within the City of Napa for potable water. The surcharge shall cease when NSD has recouped the reimbursement to City under Section 4.

In the event City chooses to directly bill recycled water costs to an operator, lessee, etc., of the Kennedy Golf Course, City agrees that such billings shall not exceed the rates charged by NSD plus such reasonable charges necessary to cover City's administrative costs in connection therewith. The City agrees not to utilize the well water on City property for irrigation of the Golf Course except in the event that NSD is unable to deliver sufficient reclaimed water to the City and use is in compliance with all applicable federal and state laws.

NSD and City agree to execute an Agreement for Sale of Recycled Water in substantially the form as attached hereto as Exhibit "C", within 30 days of this Agreement becoming effective as specified in Section 8 and Section 11, below.

7. Indemnification and Hold Harmless:

NSD shall indemnify CITY and hold harmless the CITY, its officers, officials, agents, and employees from and against any and all claims, damages, demands,

liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees arising out of or in connection with the treatment, conveyance, delivery of NSD's recycled water for subsequent use, except such loss or damage which was caused by the active negligence or willful misconduct of CITY.

8. Term of Agreement:

This Agreement shall become effective upon the later of the dates of approval and adoption of the Agreement by the Napa City Counsel and the NSD Board of Directors.

The Agreement shall remain effective until twenty years from its effective date, and may be renewed for successive terms upon conditions acceptable to both parties. The parties agree that NSD may continue to serve properties receiving recycled water pursuant to the terms of this Agreement on the termination date whether or not the Agreement is renewed. The parties also agree that Napa Sanitation District shall continue to supply recycled water to the City for Kennedy Park and to Napa Valley College and that the City will in return provide potable water to the District for main flushing and use at Districts treatment plants pursuant to Section 6 after the termination date of this Agreement whether or not this Agreement is renewed. District agrees that, if by virtue of changes in its treatment process and regulatory requirements, its recycled water is deemed "potable" pursuant to state law, it will not deliver said water to its recycled water customers within City's service area as "potable" water unless City grants written permission.

9. Miscellaneous:

a. This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and duly authorized and executed by both parties.

b. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

c. This Agreement shall be binding on and inure to the benefit of the successors of the respective parties.

d. Any notice of demand required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective parties set forth below:

CITY:
Mike O'Bryon, Public Works Director
City of Napa, Public Works Department
1600 First Street
P. O. Box 660
Napa, CA 94559

NSD:
Manager
Napa Sanitation District
950 Imola Avenue, West
Post Office Box 2480
Napa, CA 94558

Either party may, from time to time, designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt.

e. This Agreement shall be governed by the laws of the State of California.

f. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.

g. All Exhibits annexed hereto form material parts of this Agreement.

h. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

10. Arbitration:

Any dispute or claim in law or equity between the parties arising out of this Agreement which is not settled through mediation shall be decided by neutral, binding arbitration and not by court action, except as provided by California Law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The parties may agree in writing to use different rules and/or arbitrators. In all other respects, the arbitration shall be conducted in accordance with Part 3, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties have the right to discovery in accordance with the Code of Civil Procedure Section 1283.05.

11. Effective Date:

NSD has filed a Petition for Change with the State Water Resources Control Board to permit it to convey recycled water within the area specified in the petition which is attached hereto as Exhibit C. This Agreement shall only become effective when NSD secures a permit from the State Water Resources Control Board permitting the change and obtains the required permissions from the Regional Water Quality

Control Board necessary to sell recycled water within the area encompassed by this Agreement.

Executed the day and year first above written, by the parties as follows:

CITY OF NAPA:

Ed Henderson

NAPA SANITATION DISTRICT

Debra Hamilton
By:

ATTEST:

Paula Ingwers
CITY CLERK

ATTEST:

Susan Stapes
SECRETARY
NAPA SANITATION DISTRICT

COUNTERSIGNED:

Jed Christensen
FINANCE DIRECTOR

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

APPROVED AS TO FORM:

Date: 7-8-98
[Signature]
DISTRICT LEGAL COUNSEL

EXHIBIT A

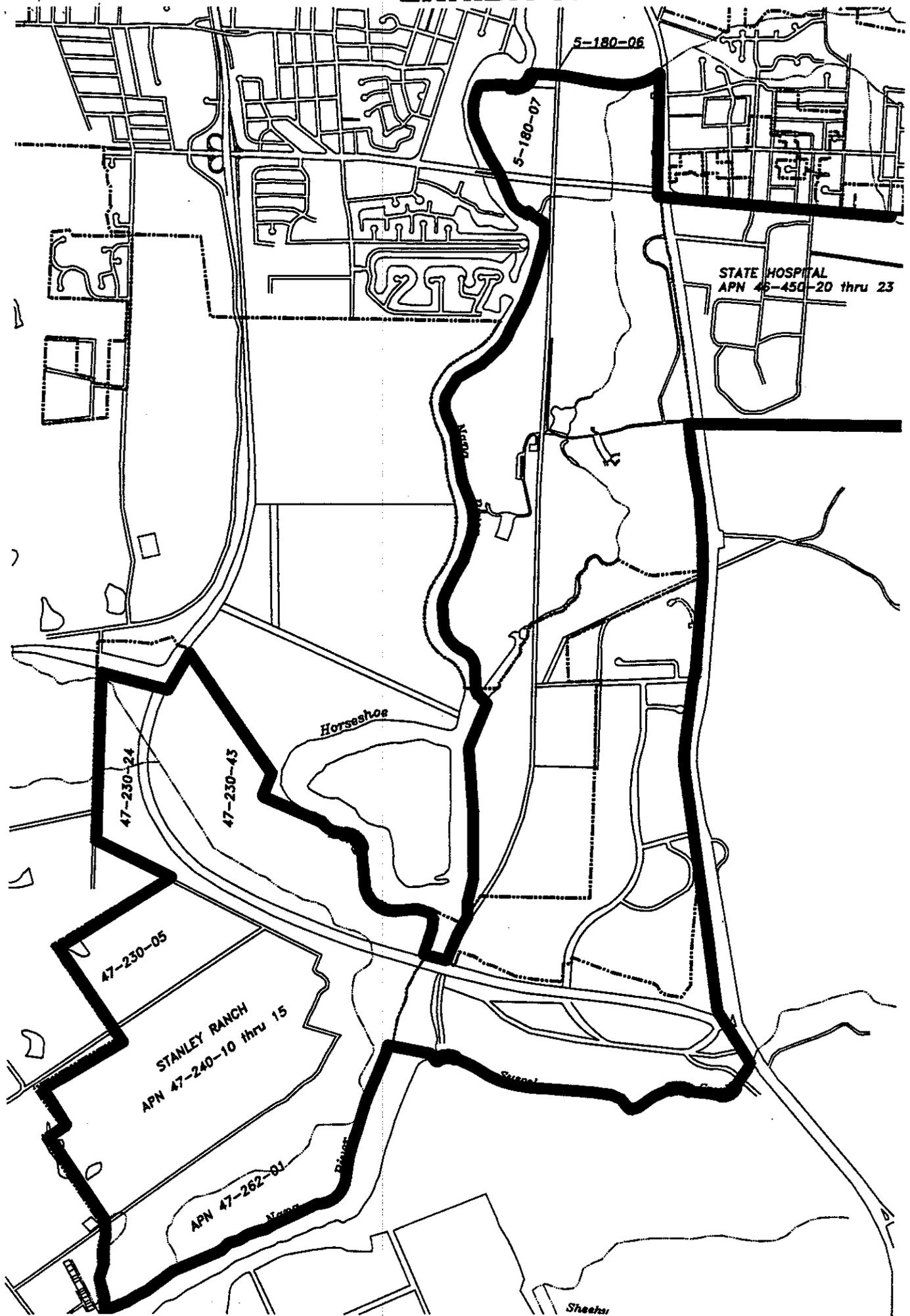


EXHIBIT "B"

Example of Reimbursement to the City for Conversion to NSD Recycled Water

- Notes:**
1. Reimbursement for each customer is calculated independently from other customers converted to NSD Recycled Water.
 2. The First year is the full calendar year following the date the potable water customer connects to NSD Recycled Water.
 3. The First Year net potable water sales is used for revenue reimbursement calculations until reimbursement obligations are fulfilled.
 4. The City of Napa's net potable water sales growth is determined to be 0.75% for the purpose of calculating the City's revenue reduction do to lost customers.
 5. Potable annual water consumption is determined to be the average potable water use for the previous three years from the date of connection to NSD Recycled Water. Average annual water consumption will be based on less than three years of water use information if water use history is not available.
 6. The current year potable water rate shall be used for calculating revenue loss to the City.

Example One:

Existing City of Napa water customer with the following characteristics:

Water Consumption = 50,000,000 gallons per year (prior 3 year average)

Current Water Rate (year 2000) = \$3.00 per thousand gallons

Annual Revenue to City from Customer = \$150,000

City Chemical and Energy Costs for Treatment = \$0.20/ thousand gallons

City Revenue Reduction from Conversion to NSD = \$140,000.00

Net Potable Water Sales (year 2000) = \$11,500,000.00

Customer switches to NSD Recycled Water April 1, 1999. NSD notifies City of customer switch to recycled water and reimbursement begins with the following calendar year (for this example the year 2000). In January of 2001 the City bills NSD for Revenue lost due to conversion to Recycled Water for full calendar year.

First Year:

Reimbursement the first year equals the total revenue loss by the City.

City Revenue Reduction from Conversion to NSD:

$\$150,000 - (\$0.20 \times 50,000 \text{ units}) = \$140,000.00$

Reimbursement to the City for January 1 through December 31, 2000 = \$140,000.00.

Second Year:

Reimbursement is reduced by City's net potable water sales growth for year (0.75%). Use First Year as base year net potable water sales:

Revenue Growth = $\$11,500,000.00 \times 0.0075 = \$86,250.00$

Current Water Rate (year 2001) = \$3.25 per thousand gallons

Annual Revenue Loss to City from Customer = \$162,500.00

City Chemical and Energy Costs for Treatment = \$0.22/ thousand gallons

City Revenue Reduction from Conversion to NSD:

$\$162,500 - \$86,250 - (\$0.22 \times 50,000 \text{ units}) = \$65,250.00$

Reimbursement to the City for January 1 through December 31, 2001 = \$65,250.00.

Third Year:

Reimbursement is reduced by City's net potable water sales growth for year (0.75%). Use First Year as base year net potable water sales:

Revenue Growth = $\$86,250 + (\$11,586,250 \times 0.0075) = \$173,146.88$

Current Water Rate (year 2002) = \$3.35 per thousand gallons

Annual Revenue Loss to City from Customer = \$167,500.00

City Chemical and Energy Costs for Treatment = \$0.24/ thousand gallons

City Revenue Reduction from Conversion to NSD:

$\$167,500 - \$173,146.88 - (\$0.24 \times 50,000 \text{ units}) = \0.00

Reimbursement to the City for January 1 through December 31, 2002 = \$0.00. **Reimbursement obligation for customer is complete.**

Example Two:

Existing City of Napa water customer with the following characteristics:

Water Consumption = 3,500,000 gallons per year (prior 3 year average)

Current Water Rate (year 2003) = \$3.55 per thousand gallons

Annual Revenue to City from Customer = \$12,425

City Chemical and Energy Costs for Treatment = \$0.26/ thousand gallons

City Revenue Reduction from Conversion to NSD = \$11,515.00

Net Potable Water Sales (year 2003) = \$12,500,000.00

Customer switches to NSD Recycled Water July 25, 2002. NSD notifies City of customer switch to recycled water and reimbursement begins with the following calendar year (for this example the year 2003). In January of 2004 the City bills NSD for Revenue lost due to conversion to Recycled Water for full calendar year.

First Year:

Reimbursement the first year equals the total revenue loss by the City.

City Revenue Reduction from Conversion to NSD:

$$\$12,425 - (\$0.26 \times 3,500 \text{ units}) = \$11,515.00$$

Reimbursement to the City for January 1 through December 31, 2003 = \$11,515.00.

Second Year:

Reimbursement is reduced by City's net potable water sales growth for year (0.75%). Use First Year as base year net potable water sales:

$$\text{Revenue Growth} = \$12,500,000.00 \times 0.0075 = \$93,750.00$$

$$\text{Current Water Rate (year 2004)} = \$3.61 \text{ per thousand gallons}$$

$$\text{Annual Revenue Loss to City from Customer} = \$12,635.00$$

$$\text{City Chemical and Energy Costs for Treatment} = \$0.27 / \text{thousand gallons}$$

City Revenue Reduction from Conversion to NSD:

$$\$12,635 - \$93,750 - (\$0.27 \times 3,500 \text{ units}) = \$ 0.00$$

Reimbursement to the City for January 1 through December 31, 2004 = \$0.00. **Reimbursement obligation for customer is complete.**

Exhibit C

AGREEMENT FOR THE SUPPLY OF RECYCLED WATER TO KENNEDY PARK

This Agreement is made and entered into in Napa, California, as of this _____ day of _____, 199_, between NAPA SANITATION DISTRICT, a special district of the State of California (Producer), and the CITY OF NAPA, a Charter City incorporated under the laws of the State of California (User), and provides as follows:

RECITALS:

A. Producer owns and operates a wastewater treatment plant in Napa County, California, which is in the San Francisco Bay Region of the California Regional Water Quality Control Board (the Regional Board), and collects and treats wastewater, discharges treated wastewater to the Napa River and recycles wastewater generated within Producer's service area.

B. User owns approximately 340 acres of land in Napa County, California, more particularly described in Exhibit "1" attached hereto and incorporated herein by reference, which land has been improved for park and recreation purposes("Property") composed of Kennedy Park and Kennedy Golf Course.

C. Producer employs wastewater reclamation as a means of reducing the discharge of treated wastewater to the Napa River.

D. Producer is authorized to sell recycled water, pursuant to Order 96-011 adopted by the Regional Board on January 17, 1996, together with all attachments thereto.

E. User is interested in purchasing recycled water from Producer for use in irrigating its landscaping, to be used and applied only in such ways as are specifically permitted.

F. Producer desires to sell to User, and User desires to purchase from Producer, recycled water on the terms and conditions hereinafter set forth.

G. Producer and User entered into an Agreement for the Sale of Recycled Water within City of Napa Water Service Area dated _____ (hereinafter "Master Agreement")

AGREEMENT:

1. Term. This Agreement shall become effective on the date first above written and shall remain in effect through the term of the Master Agreement except that the provisions of Section 2, A and B below, shall be modified effective November 1, 2015 to render User's payment terms consistent with those of other users being served by Producer at that time.

2. Purchase Price; Payment.

A. From the commencement of delivery of recycled water through the year ending December 2001, the cost of recycled water shall be \$.75 per one thousand (1000) gallons. Beginning January 1, 2002, and each calendar year thereafter during the term of this Agreement, the cost of "unrestricted use" recycled water shall be established by the annual CPI adjustment described below.

B. After December 31, 2001, the rates for recycled water shall be subject to adjustment as of the first day of January every year of the term (the adjustment date) beginning with the year 2002 according to the following computation. The basis for the adjustment is the index figure for the month of January, 2001, as

shown for the Consumer's Price Index for all Urban Consumers, San Francisco-Oakland Metropolitan Area (1982-84 = 100), published by the U. S. Department of Labor's Bureau of Labor Statistics (CPI), which is referred to as the "Beginning Index." The CPI index figure published for the month preceding the adjustment date in question, which is referred to as the "Adjustment Index," shall be utilized in determining the amount of adjustment.

If the Adjustment Index is different than the Beginning Index, the adjusted rates for the period beginning on each adjustment date and continuing to the next adjustment date shall be computed by multiplying the rates for 1000 gallons of recycled water provided in subparagraph B by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index; provided, however, that in no year shall the cost of the recycled water as determined by the Annual CPI Adjustment increase or decrease from the cost for the previous year by more than 5%. For illustrative purposes only, examples of calculations of the cost of "unrestricted use" recycled water in accordance with the Annual CPI Adjustment are set forth in Exhibit "2" hereto.

If the CPI is changed so that the base year differs from that in effect in January, 2001, the index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

C. Maximum cost of water provided to the City shall as be provided in Section 6 of Master Agreement.

D. Notwithstanding subparagraphs A through B above, if Producer is providing recycled water to any user (other than a federal, state or local agency whose use of the recycled water is for the creation, enhancement or restoration of

intermittent wetlands, wetlands or marshes) at a lower cost at any time during the term of this Agreement, that same lower cost shall be charged to User for the period of time during which said lower cost is in effect.

E. User shall be billed monthly for water delivered to the meter which serves the golf course and payment shall be due and payable within thirty (30) days of the date of the bill. Interest shall accrue on any amount not paid within thirty (30) days of the date of the bill at the rate of one (1%) percent per month. If User shall fail to pay any amount due within ninety (90) days of the date of a bill therefor, Producer may at its option suspend deliveries of recycled water until the account is brought current. Except as provided in the Master Agreement, User shall not be billed for Recycled Water supplied to Kennedy Park.

3. Compliance With Water Quality Control Board Order 96-011; Compliance With Requirements of Producer.

A. Producer and User shall comply with all of the provisions and requirements of Order 96-011 adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on January 17, 1996, and all attachments thereto (the Order), as it may subsequently be amended. A copy of the Order is attached hereto as Exhibit "3" and incorporated herein by this reference. User acknowledges to Producer that User is aware that the water sold pursuant to this Agreement is recycled water to be used for only specified and limited uses, that User has received a copy of the Order attached as Exhibit "3" to this Agreement, that User is familiar with and understands all of the provisions and requirements contained in the Order and that those provisions and requirements are reasonable, and that User covenants and warrants that it shall comply with all the provisions and requirements of the Order in the purchase and use of the recycled water.

B. User also shall comply with all of the additional provisions and requirements established by Producer, in the purchase and use of the recycled

water, which are set forth in the Producer's Water Reuse Program Manual, Exhibit "4", attached hereto and incorporated herein by this reference.

C. User shall use the recycled water delivered hereunder only for those uses authorized in the Recycled Water User permit and consistent with the Order and the requirements of Producer set forth in Exhibit "4".

4. Quality of Recycled Water Sold.

A. User understands that the recycled water that will be delivered to User hereunder has undergone a tertiary treatment process at Producer's Soscol Water Recycling Facility and is commonly referred to as "Unrestricted Use Recycled Water."

B. User understands that the recycled water to be purchased and used by User is wastewater that has been reclaimed as a result of sewerage treatment operations, and is suitable only for these uses, and in those areas specified in the permit granted User by Producer. The quality of the recycled water sold pursuant to this Agreement shall comply in all respects with the quality criteria established by the Order, although the recycled water's quality may vary within those criteria. Producer shall test the recycled water as required by the Regional Board to ensure that it meets the quality criteria set forth in the Order. The results of this testing program shall be available to User for its review upon request at any time during Producer's normal business hours. In addition to the monitoring and testing requirements of the Regional Board, Producer will test the recycled water delivered to User for the following parameters listed in Table 1.

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TABLE 1

Parameter	Desired Agronomic Range	Typical Maximum Values	Testing Frequency
pH (pH units)	6.5 - 8.0	9.0	Daily
EC (mmhos/cm.)	<0.75	1.4	Monthly
Total Dissolved	<500	800	Monthly
Calcium	<60	100	Monthly
Magnesium	No agronomic value	35	Monthly
Sodium	<30	200	Monthly
Carbonates	8	15	Monthly
Bicarbonates	75	240	Monthly
Chloride	30	260	Monthly
Ammonium-N plus	<3.0	<20	Monthly
Nitrate-N			Monthly
Boron	<0.5	0.7	Monthly
SAR	<6.0	6.0	Monthly
Adjusted SAR	<6.0	6.0	Monthly
Phosphorous	3.0	7.0	Monthly
Potassium	5.0	20	Monthly
Sulfur	<40	<40	Monthly
Iron	<1.0	<1.0	Monthly
Zinc	<2.0	<2.0	Monthly
Aluminum	<5.0	<1.0	Monthly
Arsenic	<0.1	<0.1	Monthly
Barium	No agronomic value established	<0.05	Semi-annual
Beryllium	<0.1	<0.1	Semi-annual
Cadmium	<0.01	<0.01	Monthly
Chromium (VI)	<0.1	<0.1	Monthly
Cobalt	<0.05	<0.05	Semi-annual
Copper	<0.2	<0.1	Monthly
Fluoride	<1.0	<1.0	Semi-annual
Lead	<5.0	<0.5	Monthly
Lithium	<2.5	<1.0	Semi-annual

Manganese	<0.2	<0.2	Semi-annual
Molybdenum	<0.01	<0.01	Monthly
Nickel	<0.2	<0.1	Monthly
Selenium	<0.02	<0.02	Monthly
Silver	No agronomic value established	<0.005	Monthly
Strontium	Same as above	<1.0	Semi-annual
Tin	Same as above	<1.0	Semi-annual
Titanium	Same as above	<1.0	Semi-annual
Tungsten	Same as above	<1.0	Semi-annual
Zirconium	Same as above	<1.0	Semi-annual
Vanadium	<0.1	<0.1	Semi-annual

Results in Table 1 in mg/l unless noted.

The tests shall be performed according to the "Standards For The Examination of Water And Wastewater" as published jointly by APHA, AWWA, and WEF latest edition.

The results of said tests shall be maintained at Producer's treatment plant and may be reviewed or a copy obtained by User by telephoning Producer. Each February an annual report of the test values will be sent by mail to User. When the test results consistently exceed any of the maximum ranges set forth in Table 1 above, Producer will notify User by telephone or facsimile by the close of the next business day following the day of Producer's receipt of any such test results.

If test results are consistently outside the Maximum Range set forth in Table 1 above, User may, at its option, do the following:

- (1) Continue receiving the recycled water, as is;
- (2) Continue receiving the recycled water as is and request in writing that Producer increase the frequency of testing for the item outside the Maximum Range; or
- (3) Temporarily refuse to accept the recycled water. In this case, User shall notify Producer in writing of its intention to discontinue use and the date on which use will stop. The notice shall include reference to the test results in question (type, test date, etc.).

Upon User having notified Producer as provided for in 3. above, and temporarily refusing to accept the recycled water, User shall be under no obligation to later increase its use to make-up for the water not used. User shall resume acceptance of recycled water within fourteen (14) days after receipt of written notification by Producer that the quality of the recycled water is within the Maximum Ranges set forth in Table 1.

5. Delivery and Availability of Recycled Water;
Interruption of Service.

A. Producer will deliver the recycled water to User through a pipeline extension from Producer's reclamation site, located at the end of Soscol Road, Napa, California, to the "Delivery Point" on User's Property shown on the site plan at Exhibit "5" attached hereto and incorporated herein by this reference. The recycled water shall be delivered to the Delivery Point between 100 and 150 pounds per square inch and at a rate of between 2,150 and 2,200 gallons per minute. User shall install at its own expense, as necessary, a pressure regulator at the Delivery Point. User may have its own irrigation pump stations and reservoirs located on the Property, to be paid for by User. User shall be responsible for the operation, maintenance and repair of any pressure regulator and the pipeline transporting the recycled water and for the recycled water from the Delivery Point to User's places of use. Producer shall be responsible for the operation, maintenance and repair of the pipeline transporting recycled water and for the recycled water to the Delivery Point.

B. User acknowledges and understands that Producer's delivery of recycled water during the winter discharge period is subject to the Order and the waste discharge requirements imposed by the Regional Board, as such may be amended from time to time.

C. User agrees to cooperate with Producer, at Producer's request, in the establishment of reasonable and mutually agreeable delivery schedules for the recycled water. User recognizes that the requests of various users may overload the capacity of Producer's Water Recycling Facility and delivery system and that Producer therefore may need to reduce the rates at which recycled water is delivered to the various users from time to time. In the event that the Producer reduces User's requested rate of delivery, Producer shall use its best efforts to restore the rate of delivery as soon as possible and provide User with that amount of water it would have received had its rate of delivery not been reduced.

D. Producer shall insure that the number of new customers and volume of water committed does not exceed the capacity of the plant to supply recycled

water consistently to the City. In the event Producer creates a system of user priorities for use of recycled water, Producer agrees that User shall be in the highest level for water delivered to the golf course.

E. Producer shall use its best efforts to ensure that service to User is provided consistent with the established delivery schedules, and User shall use its best efforts to accept recycled water as provided herein. However, both parties acknowledge that Producer's supply and delivery of recycled water and User's ability to take delivery of said water may occasionally be interrupted or curtailed due to Acts of God, power failures, accident, fire, strikes, riots, war, facility failures, facility improvements, inspection, maintenance and repairs of plant and equipment, actions or decisions by a governmental agency, or any condition outside of a party's control. Each party shall not be liable to the other for damages arising out of interruption or curtailment of service for these reasons. Insofar as feasible, the party whose performance hereunder is affected by such condition shall give the other party at least 72 hours advance notice of a temporary discontinuance or reduction in its delivery (in the case of Producer) or in its acceptance (in the case of User) of recycled water, except in the case of emergency, in which case notice need not be given. In the event of such discontinuance or reduction, the parties shall deliver or accept, as appropriate, upon resumption of service and as nearly as may be feasible, the quantity of recycled water that would have been delivered or accepted in the absence of such discontinuance or reduction.

F. Producer agrees to cooperate with user in delivering water before May 1 and after November 1 if climatic conditions require irrigation to landscaping during those periods.

G. In the event Producer is unable to deliver a sufficient quantity and pressure of water to User, User may utilize alternative sources of water for its Property. Use of alternative sources of water may continue until such time as Producer is able to deliver recycled water in accordance with the terms of this Agreement. User may also utilize alternative sources of water to irrigate the greens of the golf course to supplement its use of recycled water.

6. Measurement of Delivered Recycled Water. All recycled water delivered pursuant to this Agreement shall be measured by the Producer at the meter located at the Delivery Point. Producer shall own, inspect operate, maintain, repair and replace the measuring equipment. All determinations relative to the measuring of recycled water shall be made by the Producer. Upon request by User, the accuracy of a measurement shall be investigated by the Producer and any error appearing therein shall be adjusted. User may inspect such measuring equipment for the purpose of determining the accuracy thereof.

7. Monitoring Reports. User shall fill out monitoring reports on the form prescribed by the District on a weekly basis or as otherwise required by the Producer and submit them to Producer by the fifth (5th) day of each month with respect to the immediately preceding month. Any loss of recycled water off-site by spray or runoff shall be fully reported by User in such reports stating what corrective action(s) have been taken to prevent the violation from occurring again.

8. User's Rights to Recycled Water Nontransferable. User's rights to recycled water deliveries hereunder are not transferable or assignable. User shall not sell, give, transfer or distribute any of the recycled water purchased by it pursuant to this Agreement to any other party for any use, and User shall be the sole party using the recycled water.

9. Hold Harmless and Indemnification. Each party hereto agrees to release, indemnify, defend and hold harmless the other party and its directors, officers, employees, agents, successors and assigns from and against any and all actual or potential claims, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including without limitation reasonable attorneys' fees and costs and all foreseeable, unforeseeable and consequential damages) asserted against, resulting to, imposed upon or incurred by said other party by reason of the first party's breach of any provisions of this Agreement or the Order. This indemnification shall survive the termination of this Agreement.

10. Notices. Any notice, action, or demand by either party to the other in connection with this Agreement shall be deemed to have been fully given or made when such notice, action, or demand is written and deposited in a sealed envelope postage prepaid, and addressed as designated at the end of this Agreement. Either party may change its address by giving the other party written notice of its new address as herein provided.

11. Entire Agreement. This Agreement and the Master Agreement shall constitute the entire agreement between the parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this Agreement shall be of no force and effect unless contained in a subsequent written modification signed by both parties.

12. Amendments. This Agreement may not be amended except by a written instrument that is signed by both parties.

13. Interpretation. This Agreement shall be construed, interpreted, and applied according to the laws of the State of California.

14. Attorneys' Fees. If either party commences an action at law or in equity, arbitration or other proceeding against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of such proceeding, in addition to any other amounts which may be awarded.

15. Severability. If any clause or provision of the Agreement is or becomes illegal, invalid, or unenforceable because of present or future laws, or any rules or regulations of any governmental body or entity, effective during its term, the intention of the parties is that the remaining parts of this Agreement shall remain in full force and effect if the fundamental purpose of the Agreement is not destroyed.

Executed the day and year first above written, by the parties as follows:

CITY OF NAPA

Ed Henderson

MAYOR

ATTEST:

Paula Wagers

CITY CLERK

COUNTERSIGNED:

Jed Christensen

FINANCE DIRECTOR

APPROVED AS TO FORM:

[Signature]

CITY ATTORNEY

DATED: 4 August 1998

C:\AGREEMNTS\REC\WATER\CITY

NAPA SANITATION DISTRICT

[Signature]

CHAIRMAN

ATTEST:

Susan Staples

SECRETARY

NAPA SANITATION DISTRICT

APPROVED AS TO FORM:

[Signature]

DISTRICT LEGAL COUNSEL